



Frederick L. Cottrell, III  
302-651-7509  
cottrell@rlf.com

January 19, 2024

**VIA CM/ECF**

The Honorable Jennifer L. Hall  
U.S. District Court for the District of Delaware  
844 King Street, Room 6312  
Wilmington, Delaware 19801

RE: *Orca Security Ltd. v. Wiz, Inc.*, C.A. No. 23-0758-JLH

Dear Judge Hall:

We write on behalf of Defendant Wiz, Inc. (“Wiz”) concerning Plaintiff Orca Security Ltd.’s (“Orca”) request that the Court hold a Rule 16(b) scheduling conference. D.I. 25. Wiz respectfully requests that the Court deny the request and continue with the common practice in Delaware to wait until the pleadings are closed and Court issues an Order directing the parties to confer on a schedule. This makes practical sense in this case particularly given that the universe of claims by both parties, including Wiz, the defendant, remains unsettled.

As Orca is aware, it is common practice in the District of Delaware to wait until after a decision on a motion to dismiss and after an answer is filed to hold a Rule 16 Conference. *See Bayer Healthcare LLC v. Baxalta Inc.*, C.A. No. 16-1122-RGA, D.I. 26 (denying request for Rule 16 conference and stating that “[t]he Rule 16 Conference will be scheduled after the Court resolves the pending motion [to dismiss].”); *see also Nevro Corp. v. Boston Scientific*, C.A. No. 21-258-CFC-CJB (order setting Rule 16 conference issued after decision on motion to dismiss and answer filed); *Lit LLC v. Dell Technologies, Inc.*, C.A. No. 23-121-RGA, D.I. 31 (order setting Rule 16 conference issued after decision on motion to dismiss indirect and willfulness claims and answer filed); *Bench Walk Lighting LLC v. LG Electronics, Inc.*, C.A. No. 20-0051-RGA, D.I. 61 (order setting Rule 16 issued after decision on motion to dismiss second amended complaint and answer filed); *Malvern Paralytical, Inc. v. TA Instruments-Waters LLC*, C.A. No. 19-2157, D.I. 29 (order setting rule 16 conference issued after decision on motion to dismiss first amended complaint and answer filed).

It makes practical sense to continue with common Delaware practice in this case in particular. First, Wiz has yet to have the opportunity to file a responsive pleading, and thus the universe of claims by both parties remains unknown. Wiz and Orca are both operating companies in the cybersecurity sector. Wiz may raise counterclaims in response to Orca’s allegations, which should be properly accounted for in any case schedule. Otherwise, the parties could have to readjust the case schedule, which would be a waste of party and judicial resources. Second, Wiz’s motion to dismiss could significantly alter the claims at issue. Wiz’s pending motion to dismiss Orca’s

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Second Amended Complaint seeks dismissal of Orca's indirect and willful infringement claims pursuant to Fed. R. Civ. P. 12(b)(6). D.I. 18. While Orca identifies no undue prejudice arising from deferring the Rule 16(b) scheduling conference until after the pending motion is resolved, there is a real risk of undue prejudice to Wiz if it is forced to incur litigation costs in discovery that may ultimately prove unnecessary.

Finally, Orca relies on the length of time this action has been pending to support its request. That is largely due to Plaintiff's actions and ignores all activity by the parties in the interim. The parties agreed to stipulate to the typical extension to respond to Plaintiff's original complaint. D.I. 8. Defendant moved to dismiss (D.N. 12) and Orca then waited until the latest possible day to file an amended complaint in response. D.I. 13. Orca then filed yet another amended complaint. D.I. 15. Wiz filed a motion to dismiss the Second Amended Complaint on November 21, 2024. D.I. 17. The parties then jointly worked out a stipulation for both parties to extend the briefing schedule to accommodate the holidays. D.I. 19. Wiz filed its reply brief on Jan. 5, 2024, resulting in the motion to dismiss having been fully briefed for less than two weeks. D.I. 23.

Accordingly, Wiz respectfully requests that the Court continue to defer the Rule 16(b) scheduling conference until after Defendant's motion to dismiss is resolved and the pleadings are closed.

Respectfully submitted,

*/s/ Frederick L. Cottrell, III*

Frederick L. Cottrell, III (#2555)

Enclosure

cc: Clerk of Court (via hand delivery)  
All Counsel of Record (via electronic mail)